

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

4

FILE:

MSC 05 357 10687

MSC 07 255 10075 – APPEAL

Office: NEW YORK CITY

Date:

JUN 03 2009

IN RE: Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements) was denied by the District Director, New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on September 22, 2005. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status and was continuously physically present in the United States for the duration of the requisite periods.

On appeal the applicant asserts that he has submitted sufficient credible documentation to establish that he entered the United States before January 1, 1982, resided continuously in the country in an unlawful status and was continuously physically present in the country for the duration of the requisite periods.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of

continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite periods consists of the following:

A letter of employment from Pioneer Contracting Company in Brooklyn, New York, dated March 1990, stating that the applicant was employed from August 1982 to March 1985 as a helper and was paid \$200.00 per week in cash.

A letter of employment from [REDACTED] of Golden Waterproofing in Brooklyn, New York, dated March 1990, stating that the applicant was employed from November 1985 to March 1987 as a helper.

- A letter of employment from [REDACTED] owner of Parkland Construction in Brooklyn, New York, dated May 1990, stating that he has known the applicant since 1981 when the applicant arrived in the United States and that he employed the applicant as a laborer in his company from 1985 to the present (1990).
- A letter from [REDACTED] president of V.L.M. Inc., D/B/A Reliable Bakery in Brooklyn, New York, stating that he has known the applicant since 1987, that he has employed the applicant on several occasions since 1987, and that the last employment was in 1993.
- Three envelopes addressed to the applicant at [REDACTED], in Brooklyn, New York, from individuals in Pakistan, with illegible postmark dates.
A retail receipt from Queensboro Hardware Company, with handwritten notation of the applicant's name and no address, dated May 3, 1986.
- A letter from [REDACTED], Clergyman at the Islamic Seminary Inc. New Jersey dated February 24, 2004, stating that the applicant "is a respected member of our Islamic Center," and an active participant in religious events since early 1980s.
A series of affidavits -- dated in 1990, 2001 and 2006 -- from individuals who claim to have resided with or otherwise known the applicant since the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The AAO notes that although the applicant stated that he entered the United States before January 1, 1982 and resided continuously in the country through the period required for legalization, other documentation in the record indicates otherwise. For example, on a Form G-325A (Biographic Information) dated August 13, 2001, which the applicant completed under penalty of perjury and submitted with the Form I-485 on August 21, 2001, the applicant indicated his residence outside the United States of more than one year as follows: [REDACTED]
[REDACTED] Pakistan from November 1960 (month and year of birth) to October 1987.

At his legalization interview on October 5, 2006, the applicant testified that he entered the United States in November 1981. The applicant submitted a series of affidavits and letters from individuals who claim to have known that he had been residing in the United States since 1981 as well as other documents attesting to his residence in the United States prior to October 1987.

On the Form I-687 (application for status as a temporary residence) completed by the applicant on August 20, 1990, the applicant indicated that he has a son -- [REDACTED] born in Pakistan, but did not indicate his date of birth. On the same form, the applicant indicated that he made one trip outside the United States during the requisite period -- a trip to Pakistan to visit his family from September 1987 to October 1987. The applicant did not indicate any other absences from the United States during the requisite period. On a prior Form I-485 the applicant filed on July 19, 1999, the applicant indicated the date of birth of his son as August 15, 1988. The applicant

stated that he was married in Pakistan on July 18, 1987. The marriage of the applicant in July 1987 and the birth of his son in August 1988, strongly suggest that the applicant was in Pakistan before and after his alleged trip to Pakistan in September and October of 1987. The director notified the applicant of the inconsistencies in the record and offered him the opportunity to submit objective evidence to reconcile the inconsistencies, but he failed to do so. The applicant did submit a photocopy of a marriage certificate showing that he was married in Pakistan in September 1987 as opposed to July 1987, but failed address the issue of the conception and birth of his child in Pakistan at the same time he allegedly claims to have been residing in the United States. The photocopied marriage certificate has very little evidentiary weight because photocopies can easily be forged and the applicant did not submit the original of the marriage certificate for proper verification.

The record reflects that the applicant submitted conflicting statements and contradictory documentation in support of his application. The applicant provided contradictory information regarding his residential addresses and employers in the United States during the 1980s. On the Form I-687 dated August 20, 1990, the applicant indicated his residential addresses and employment in the United States during the requisite period as follows:

Residence:

- [REDACTED], from October 1981 to February 1983;
- [REDACTED], from February 1983 to September 1987;
- and
- [REDACTED], from October 1987 to May 1990.

Employment:

- Pioneer Construction Company, Brooklyn, New York, helper, from August 1982 to March 1985;
- Unemployed, from April 1985 to November 1985;
- Golden Water Proofing Company, Corona, helper, from 1985 to March 1987; and
- Indo Pak Grocery, helper, from May 1987 to May 1990.

On the Form I-687 date August 25, 1990, the applicant indicated his employment during the requisite period as follows:

- Pioneer Construction Company, Brooklyn, New York, painting, from December 1981 to March 1985;
- Parkland Construction Company, Brooklyn, New York, laborer, from April 1985 to September 1987; and
- Indo Pak Grocery, North Hollywood, California, cashier, from October 1987 to May 1990.

On the Form I-687 the applicant filed on September 22, 2005, the applicant indicated his addresses and employment in the United States during the requisite period as follows:

Residence:

- [REDACTED], from October 1981 to February 1983; and
- [REDACTED], from February 1983 to August 1990.

Employment:

- Pioneer Construction Company, Brooklyn, New York, helper, from August 1982 to March 1985;
- Golden Waterproofing Company, Corona, New York, helper, from November 1985 to March 1987; and
- Self-Employed, from May 1987 to August 1991.

The applicant provided contradictory statements about his residential addresses and employment on three separate applications he submitted. The applicant did not provide any objective documentation to reconcile the contradictions, rather the applicant submitted employment documentation that further contradicted the statements he made on the three applications. For example, the applicant submitted a letter of employment from Parkland Construction located in Brooklyn, New York, indicating that the applicant was employed from 1985 to 1990. On the Form I-687 dated August 20, 1990, however, the applicant indicated that he was residing in North Hollywood, California for part of the period he was allegedly employed by Parkland Construction in Brooklyn, New York. Also, the applicant submitted a letter from Reliable Bakery in Brooklyn, New York, indicating that the applicant had worked for the company on several occasions starting in 1987. First, the applicant did not indicate that he worked for the Bakery at any time during the 1980s, and secondly, the applicant was allegedly residing in North Hollywood, California at the same time that he allegedly worked to the Bakery in Brooklyn, New York. The director notified the applicant of the contradictions in his employment and residential history and granted him the opportunity to submit objective evidence to reconcile the contradictions, but failed to do so. The contradictions discussed above and the lack of objective evidence in the record to justify or explain the contradictions, undermines the veracity of the applicant's claim that he entered the United States before January 1, 1982, as well as the overall credibility of the documentation in the record attesting to the applicant's residence in the United States during the requisite period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N

Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence – consisting of a series of affidavits – from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, envelopes addressed the applicant at an address he claimed in the United States, and retail receipt is suspect and not credible. For example, affiant [REDACTED] stated that he resided with the applicant at [REDACTED], from October 1, 1987 to May 1, 1990, however, the applicant did not indicate that he resided at this address during the period indicated by the affiant on the Form I-687 he filed in 2005. Furthermore, affiant [REDACTED] submitted a statement from [REDACTED] resident manager of the apartment complex as evidence that he was residing at the apartment during the requisite period. However, the statement indicated that the affiant [REDACTED] resided at the North Hollywood apartment from 1988. Therefore it is not possible that the applicant would have resided at the North Hollywood apartment with affiant [REDACTED] at a time the affiant was not even a resident of the apartment complex. This inconsistency calls into question the credibility of the affidavit as well as the credibility of the other documents submitted by the applicant as evidence of his residence in the United States during the requisite period. As for the employment documentation, neither the authors nor the applicant submitted any earnings statements, W-2 Forms or tax records to show that the applicant was employed during the periods indicated. Thus, it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period for legalization.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.